

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, JANUARY 14, 1999

Chairperson McLaughlin called the meeting to order at 1:30 p.m. at the LaConner Country Inn, LaConner, Washington. She introduced the members of the Commission and the staff present.

MEMBERS PRESENT: **LIZ McLAUGHLIN, Chairperson;**
 MARSHALL FORREST, Vice Chair;
 and CURTIS LUDWIG

OTHERS PRESENT: **BEN BISHOP, Executive Director;**
 SHERRI WINSLOW, Deputy Director of Operations;
 ED FLEISHER, Deputy Director of Policy and Government Affairs;
 CALLY CASS-HEALY, Assistant Director of Field Operations
 DERRY FRIES, Assistant Director of Licensing Operations;
 BOB BERG, Assistant Director, Special Operations;
 AMY PATJENS, Manager, Communications and Legal Services;
 JONATHAN McCOY, Assistant Attorney General; and
 SUSAN YEAGER, Executive Assistant

Chairperson McLaughlin announced that the manufacturing review of Infinity Group Inc., item number five, was taken off the agenda.

LICENSE APPROVALS **NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS**

Commissioner Forrest moved to approve the new licenses, changes, and tribal certifications as listed in the agenda; **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

REVIEW OF FRIDAY'S AGENDA

Ms. Patjens said there is a change in tomorrow's agenda. There will be two staff reports; the agenda lists only one. One report, by Deputy Director Sherri Winslow, is a brief summary of the card room enhancement test program. The other report, by Deputy Director Ed Fleisher, is an update on current pending legislation. There will also be the Yakama Tribes Phase II review. There is only one rule on the agenda up for final action, a moratorium on the net return requirements. Next month there will be many card room rules on the agenda.

QUALIFICATION REVIEWS

NORTHWEST AMATEUR HOCKEY ASSOCIATION, Mountlake Terrace

Mr. Fries said the organization was formed in 1978 to encourage and promote the growth of amateur hockey in accordance with accepted youth movement objectives. These objectives include teaching physical skills, fair play, discipline, respect for authority, and competitiveness. The organization has been licensed since 1979 and has 85 active members and a nine-member governing board. The Association has 3 officers and a full time director, 4 part time employees and 25 volunteers who provide program services. The organization coordinates program activities for an estimated 550 participants that include a AAA midget team for ages 15-18, a AAA senior men's team and a senior league men's program with primary focus on youth AAA midget team. These

teams participated in Canadian Amateur Hockey League and in British Columbia in 1997 and 1998. Three players are on hockey college scholarships and two players moved up to Class B teams in Canada where they are pursuing hockey careers.

Mr. Fries said that for the fiscal year ending June 30, 1998, the Association did not meet its required combined net percentage of 12 percent in its Class "J" bingo. The organization's combined net return was 8 percent and was issued a notice of intent to limit the license class to the violation on September 30, 1998. The organization's year-to-date net return as of September 30, 1998, was 13.4 percent. On October 13, 1998, the organization petitioned the Commission for a variance in net return requirement. Based upon the information provided the organization for the last six months June through November of 1998, the Association was granted a variance to operate at a Class "K" through December 31, 1998.

Mr. Fries said the organization has applied for a Class "J" license for their upcoming license year, which begins January 1, 1999. Northwest Amateur Hockey Association has had a deficiency of expenses over revenues of \$86,000 for fiscal year ending June 30, 1998. In order to fund these programs they have decreased expenses, increased revenues. Specifically, the following issues were addressed by the organization: Ice use contracts were renegotiated at lower rates; van use for player transportation was sold and not replaced; coaches salaries were decreased, and players now purchase their own equipment and uniforms. In addition, fundraisers and an increase in hockey dues are expected to increase revenue. The organization met its program and supporting services expenditure requirements and did not have excessive reserves. At present, there are no administrative charges against the organization. The staff recommends that Northwest Amateur Hockey Association be approved as an athletic organization and authorized to conduct gambling activities in the state of Washington.

Commissioner Ludwig asked Mr. Fries if by passing the temporary moratorium rule the Commission would help the organization solve the non-compliance in this situation. **Mr. Fries** said it would help somewhat.

Commissioner Forrest pointed out that the organization had made a lot of progress recently and asked Mr. Beadle how he thought the future looked as far as the organization was concerned in being able to get back into compliance

Chairperson McLaughlin asked if there was anyone from the organization who wished to speak.

Rick Beadle, Northwest Amateur Hockey, said they were back in compliance now and having no problem, but things will worsen because of so many casinos. He said there are two in operation within three miles and a third would be opening next month.

Commissioner Ludwig moved to adopt the staff's recommendation and approve the Northwest Amateur Hockey Association as a qualified nonprofit organization licensed to conduct gambling in the state of Washington. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

ROTARY CLUB OF COLUMBIA CENTER, Kennewick

Mr. Fries said the organization was formed in 1985 for the purpose of providing humanitarian services, encourage high ethical standards in all vocations, foster and development of acquaintances as an opportunity for service and to encourage good will, understanding and peace in the world. The organization has been licensed in 1989 and has 92 active members and a 10-member board including 5 officers. The organization has 75 volunteers who provide program services to more than 500 members of the public. The Club provided financial assistance to many community service programs in the Tri-Cities area. These programs included Coats for Kids, Safe Harbor, Tri-Tech Skill Center, and many others. It also provided eight scholarships to exchange students attending local colleges.

Mr. Fries reported that for the fiscal year ending June 30, 1998, the organization met its required combined net percentage of 8 percent for its Class "H" bingo license by achieving 15.7 percent. The organization's year-to-date net return as of September 30, 1999, was 13.3 percent. The organization met its program and supporting services expenditure requirements and did not have excessive reserves. At present there are no administrative charges pending against the organization. The staff recommends approval as a charitable organization and

authorized to conduct gambling activities in the state of Washington.

Chairperson McLaughlin called for comments or questions and asked if there was anyone present to represent the organization. No one was present.

Commissioner Ludwig said he has never been inside the facility, but they are just five minutes from his home. He moved to approve this organization as a charitable organization authorized to conduct gambling activities in the state of Washington. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

SEATTLE JUNIOR HOCKEY ASSOCIATION, Mountlake Terrace

Mr. Fries said the organization was formed in 1974 to encourage and promote the growth of amateur hockey and other youth-related activities in accordance with accepted youth-movement objectives. These objectives include teaching physical skills, fair play, discipline, respect for authority, and competitiveness. The organization has been licensed since 1976 and has 42 members and a 9-member board including 3 officers. The organization has a full time executive director and 16 employees who provide program services. More than 240 volunteers donated approximately 24,000 hours of hockey services to 1,696 participants. The Association coordinates and maintains 6 major athletic clubs for participants ranging from 5 to 21 years of age who play within and outside the state of Washington. The Association also made cash contributions totaling for \$19,000 to other nonprofit organizations and provided over \$31,000 in scholarships to 13 individuals.

Mr. Fries reported that for the fiscal year ended June 30, 1998, the group met its required combined net percentage of 16 percent for its Class M bingo license by achieving 21.8 percent. The organization's year-to-date net return as of September 30, 1998, was 16.7 percent. The organization met its program and service expenditure requirements and did not have excessive reserves. At present, there are no administrative charges pending. The staff recommends that Seattle Junior Hockey be approved as an athletic association and authorized to conduct gambling activities in the state of Washington.

John Beadle, executive director of Seattle Junior Hockey, said he would be glad to answer any questions.

Chairperson McLaughlin asked what's been going on since the last meeting when he informed the Commission that the mini-casinos were having an effect on his business.

John Beadle, said that he just gave to Ms. Winslow a copy of the figures that shows a 25 percent reduction in net profit for the July-August-September quarter and he had hoped it would hold at that figure; however, it went down 53 percent for October-November-December. They also lost some on bingo because of snow the last couple of days of December, but other than that, there has been a dramatic and continuing downtrend. They have had to make many immediate cuts in their costs. They were compelled to cut even things they did not wish to cut. They cut a quarter of million dollars out of their program, laid off eight part time and one full time employees. They terminated one travelling hockey team, the only Junior B Team in the state of Washington, and they are still looking over ways to cut further, such as terminating their bingo security on January 21st, which is a savings of \$21,000 a year. He said he hoped there would be some legislative relief coming forward.

Commissioner Ludwig asked if he were in King or Snohomish County. **Mr. Beadle** said he was in Snohomish County. **Commissioner Ludwig** said the reason he asked was that their total tax payments for 1998 were about a half million dollars. **Mr. Beadle** said that was the total tax, not gambling tax. **Commissioner Ludwig** said a pretty good portion of that was gambling tax, and **Mr. Beadle** agreed that it was almost \$200,000. **Commissioner Ludwig** said he likes to make note of the amount of the tax that is going to local government and he appreciates it.

Director Bishop said that in looking at the net income (just taking their bingo, pull tabs, and snack bar) that they were up \$130,000 over fiscal year '97. **Mr. Beadle** said it had been stable over the last three years and then it went down on July 1, but it wasn't all due to the mini casinos. He said they had a new bingo game that opened just north of their establishment on the exactly the same three days that they play bingo. Just south of their

establishment is a game that switched to the same days as Seattle Junior Hockey's bingo. **Director Bishop** said it appeared to be a combination of things – saturation of gambling in general and direct competition. **Mr. Beadle** said their biggest competitors were the 400 other nonprofit organizations that were operating and competing against him, not so much the tribal casinos and mini-casinos.

Chairperson McLaughlin asked what satellite bingo would do for the industry. **Mr. Beadle** said it would help, but mostly it would be a band aid.

Commissioner Forrest asked if the charitable organizations are going to ask for anything more than a "Band-Aid" from the Legislature this year. **Mr. Beadle** said their committee is still meeting and there is a draft proposal they're working on right now to have the electronic bingo machines to operate them during bingo, but also to operate them seven days a week. On the four days that they are normally closed, they would have those open just for electronic bingo machines and they could be linked throughout the state and that would give them an additional revenue source when they are not open, better use of their facility. Another item they're looking at is the "me too" legislation, which is to obtain what the tribal entities are getting as far as the machines. Still another idea is to operate more days per week, but they are basically looking at items that are revenue enhancements. They want to focus on increasing revenue, not decreasing their costs. **Commissioner Forrest** asked for the group to let the Gambling Commission know when they have come up with legislation. He said he didn't want to miss out in supporting the group just because they do not hear about it in time to be of use. **Mr. Beadle** said their group is working with the WSGC staff now on possible legislation.

Commissioner Ludwig moved to approve Seattle Junior Hockey Association as an athletic organization authorized to conduct gambling activities in the state of Washington. **Commissioner Forrest** seconded the motion.

Vote taken; motion carried with three aye votes.

LINKED BINGO PRIZE PROVIDER REVIEW

WASHINGTON CHARITY SATELLITE BINGO, Edmonton, Alberta

Mr. Fries said this organization has applied for a license to conduct and market linked bingo prize games in the state of Washington. Mr. Fries named the officers and said that the organization was incorporated as a privately-held corporation in the state of Washington on April 29, 1997. The corporation has issued 1,000 shares of common stock, all of which are owned by the Satellite Bingo Network US, Inc. as a wholly-owned subsidiary of the Satellite Bingo Network Canada Inc., a Canadian corporation. The owners of the Satellite Bingo Network each own 25 percent of the stock. The corporation does not presently hold any gambling licenses because a license is not required for their services in Canada.

Mr. Fries said the investigative procedures, which were conducted on corporate and financial records to detect hidden ownership, unreported officers or directors, undisclosed ownership in other companies and substantial interest holders, revealed no disqualifying information. Criminal history and background checks were performed and no adverse information was noted. The organization was formed with capital from the Satellite Bingo Network in Canada and Bingo Products Canada, which is closely affiliated with the Satellite Bingo Network and they have common ownership. Currently, the corporation negotiates with the Royal Bank of Canada for equipment leases and loans for approximately \$1 million. The owners estimate that an additional \$475,000 in working capital will be needed and a plan of securing those funds from the related companies. The staff recommends that the organization be approved as a linked bingo provider in the state of Washington. He said Mr. Robert Cowman was present for questions.

Commissioner Ludwig asked Mr. Cowan if his company was involved in any other ventures in the United States. **Mr. Cowan** said they did not have any now, but they had a joint venture with another company at one time, but which had been dissolved. He said there are two satellite providers of a game of the type that they provide. They have been operating for three years in Alberta, Canada, and have been talking to the charities for about three years as well as establishing a game in the USA. **Chairperson McLaughlin** asked how much

attendance has increased in halls where they have added satellite bingo. **Mr. Cowan** said in terms of attendance they were experiencing 10 to 15 percent. Profits can range, depending upon the size of the halls, all the way from about 30 percent to about 75 percent. The average size of a hall is 150-200.

Commissioner Forrest asked if they provide services to all qualified charities. **Mr. Cowan** said there has to be a certain number of people being served before they'll go in. He said they were looking at every opportunity to provide everybody with the same chance.

Commissioner Forrest moved to approve the application. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

DEFAULT ORDER

DENIAL OF APPLICATION FOR GAMBLING LICENSE

Super Five Corporation, d/b/a Panda of China, Federal Way

Ms. Patjens said information on this is under tab 3 of handout packet number 1. She explained that a year ago, there was a case pending against the Panda of China and the original license was revoked after a hearing before an administrative law judge. Their revocation was based on several things. First, the 50 percent owner of the corporation, Steve Lao, hired a Gambling Commission undercover agent to work as a game starter. He did not license this person and originally said that the person was going to have to be licensed. Later on he said, "Well, we've changed our minds. If you're asked about what you're doing here, just explain that you don't get paid for what you're doing here."

Ms. Patjens said the business also had four other unlicensed card room employees doing the same thing and the business allowed credit to be extended and then also allowed bookmaking to occur on the premises and one of the owners was a substantial placer of those bets during this time. The administrative law judge (ALJ) did revoke the license and the order became final in January of 1998. Three months later, Mr. Lao decided that he would sell his interest to his son, Tom Lao, for \$25,000 in a no interest loan and another substantial interest holder had done the same thing. When Mr. Lao sold the interest to his son, he still was a substantial interest holder and therefore had to meet the qualifications for licensure.

Ms. Patjens said the director because of the past violations denied the application. The charges were sent by certified mail. Something unusual happened because people don't usually respond at all to the charges, but in this case the former owner's son did send the notice back and note that he was not requesting a hearing and acknowledged that he would be waiving his rights to a hearing accordingly. The staff recommends denial. She said if someone doesn't request a hearing, a final order is still necessary.

Commissioner Forrest moved to enter the default order; **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

CARD ROOM CONTRACTS UNDER APPENDIX B – GENERAL ENHANCEMENT PILOT TEST

Ms. Cass-Healy said the first three licensees are requesting approval under appendix B, which may include one or several items including increasing the number of tables above five. Alternative collection of card room fees, player-supported progressive jackpot schemes, player-funded banked card games. Appendix B are under handout packed number 1, tab 1, and they have not traditionally prepared informational reports for presentation at these meetings, they just go over the operational agreement and ask for approval.

RUBY'S CASINO, Kent

The first licensee is Aztec Development, doing business as Ruby's Casino. They are located in Kent,

Washington, and they are requesting eight tables and five with a rake. One player-supported jackpot and the staff recommends approval of Ruby's Casino.

Commissioner Forrest moved to approve Ruby's Casino for the General Enhancement Pilot Test program. **Commissioner Ludwig** seconded the motion. He asked if part of the tables were required to be player-banked blackjack. **Ms. Winslow** answered that, generally, when they have a rake at a poker game, with the other three tables -- she was not aware of what they were planning on operating -- it was likely to be Washington Blackjack, because if they are going to go into the banked arena, they have to go into appendix C. She said it looked like they were only playing a PSJ at one of the tables because if they are playing at more than one, they have to approval for each scheme. For the player-funded banking, no one in the state is operating. They had a limited test and that was discontinued when they started approving people for house banking. **Commissioner Ludwig** said that would lead to the conclusion that they have two or three Washington blackjack tables. **Ms. Winslow** said that would be her guess unless it was poker without a rake. They could be collecting by the hand or by the hour.

Chairperson McLaughlin asked if anyone from Ruby's is present and if they'd like to speak.

Bob Fochet said they are only going to be operating five poker tables. They had originally requested the three player-funded games, but then found out that that was no longer acceptable with the state so they rescinded that and are only licensing five poker tables at this point.

Chairperson McLaughlin called for the vote. *Vote taken; motion carried with three aye votes.*

HUNAN PALACE Everett

Ms. Cass-Healy said this operation is requesting five tables, three with a rake, and the staff recommends approval. **Chairperson McLaughlin** asked if anyone was present from Hunan Palace. No one came forward.

Commissioner Ludwig asked if they could have five poker tables and take a rake on three, or if they can have three poker games and two Washington Blackjack tables. **Ms. Winslow** said that was correct.

Commissioner Ludwig moved to approve the license application of the organization. **Commissioner Forrest** seconded the motion.

Chairperson McLaughlin said she knows this establishment did not have a gambling license and she had wondered how they were able to get by with this because it was her understanding that they had to have a license before they could go into the general enhancement program. **Ms. Cass-Healy** said there are two people who are licensed and are involved in this, so that's why they're part of this enhancement program. *Vote taken; motion carried with three aye votes.*

NON-STOP BAR & GRILL, Tukwila

Ms. Cass-Healy said this organization is requesting five tables and one player-supported jackpot scheme, and the staff recommends approval. **Chairperson McLaughlin** asked if a representative was present. No one came forward.

Commissioner Forrest moved to approve. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

CARD ROOM CONTRACTS UNDER APPENDIX C – HOUSE BANKED PILOT TEST

21 CLUB, Tukwila

Ms. Cass-Healy said this is commercial restaurant, lounge, and card room. They are owned by American Orchid, Inc. Lilly Hsue is the owner and has been operating under her ownership since February 1997. The 21 Club is requesting approval to conduct house-banked card games with 15 tables including four house-banked blackjack, five progressive blackjack, two let it ride, two Caribbean stud, one Pai Gow poker table and one mini baccarat table. Special agents reviewed their internal controls which consists of administrative and accounting controls, forms and record, surveillance, organization of a gaming operation, and game rules. Controls in these areas were compared to appendices B and C and it was determined that controls were adequate and in compliance with the appendices. Special agents also conducted the pre-operation inspections in which the major size and scope of the gaming operation and controls are compared to the information submitted by the licensee. It was determined that the licensees' operations are in compliance with all of the requirements of appendices B and C. Internal controls appear to be functional as stated in the internal control submission. Based on this review, approval to participate in the Commission's house-banking card room test as a Phase I, Level II, operation is recommended.

Commissioner Ludwig pointed out that in the handout materials, it showed the owners to be Win/Mac, Inc. on the operating agreement. **Ms. Cass-Healy** said that was incorrect and would be changed. She said the original contract has the correct information on it, which is American Orchid, Inc.

Lilly Hsue, 100 percent share holder in American Orchid, Inc., said she had owned the Club for almost two years. **Commissioner Ludwig** asked if she had prior experience in this type of business. **Ms. Hsue** said she did not, but she had a gambling license for six years for pull tab gambling and she has been operating for the past two years under appendix B and all the forms and all the regulations for this. **Commissioner Ludwig** asked if the 21 Club was presently doing Washington Blackjack or player-banked blackjack. **Ms. Hsue** said they did player-banking for a short time, but discontinued that for the past three months. **Commissioner Ludwig** asked if there was a waiver required on the six months. **Director Bishop** said he thought that when the business was sold they operated a card room, which met the requirements and they've been licensed now for almost two years. **Ms. Hsue** said she appreciated all of the help she has received from the agents in helping her get this far. She said she would be a good manager.

Commissioner Ludwig moved to approve. **Commissioner Forrest** asked if it should be added as a proviso that they should demonstrate that all employees would be licensed. **Commissioner Ludwig** said they might be eligible under the 20-day rule, but they wouldn't be licensed. **Commissioner Forrest** said, as he understands the report and if it is current, they are interviewing and selecting prior to opening. He wondered if it was normal to approve a license prior to opening and if they needed to express the condition that they meet as is outlined or was it implied. **Ms. Cass-Healy** said that, in the past, staff has just performed the follow-up inspection and the Commission did not need to include that in their motion. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

PARADISE VILLAGE BOWL, Tacoma

Ms. Cass-Healy said this is an existing commercial restaurant, lounge, bowling center and card room in Tacoma, Washington. The card room has been operating under present ownership since April 9, 1996. Charles Lynn, Jr., president, and his wife, Florence, treasurer, each hold 50 percent of the stock. They are requesting approval to operate a total of 15 house-banked tables which include 11 blackjack tables, one progressive blackjack table, one let it ride, one Caribbean stud, and one Pai Gow poker table. Special agents reviewed the internal control submissions and conducted the pre-operation inspections. Based on the review, it was determined that the licensee's operations are in compliance with all of the requirements of appendices B and C and the internal controls are functional as stated in the internal controls submission. Staff is requesting approval to participate in the Commission's house-banked card room tests as a Level II, Phase I, operation.

Chairperson McLaughlin asked if anyone is present from Paradise Village Bowl who have questions of Mr. Lynn. **Mr. Lynn** said they have worked on this a long time and are ready to go. He said they have another bowling center.

Commissioner Ludwig moved to approve. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

GOLDEN NUGGET, Tukwila

Ms. Cass-Healy said this is the Vormsberg Company, doing business as the Golden Nugget, and they operate a restaurant, lounge and card room. The card room has been operated under the present ownership since May of 1995. They are requesting approval to operate five tables, two house-banked blackjacks, two poker and one pan, all with maximum betting limits of \$25. Special agents who also conducted the pre-operations inspections reviewed their internal controls. Approval to participate in the Commission's house-banked card tests as a Level II, Phase I, operation is recommended.

Chairperson McLaughlin asked if anyone from the Golden Nugget is present. **Mr. Vormsberg** came forward to answer questions.

Commissioner Ludwig asked if he is presently operating a player banked card room and also did he have any other licenses prior to this application. **Mr. Vormsberg** said no, and that he has operated card rooms in the past. He thanked all the commissioners for giving them this opportunity to have more business.

Chairperson McLaughlin said he should thank the Legislature.

Director Bishop asked if they are currently operating Pan. **Mr. Vormsberg** said yes, they are one of the few.

Commissioner Forrest moved to approve. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

HANK'S COUNTRY INN/RESTAURANT, Belfair

Ms. Cass-Healy said this is a commercial restaurant, lounge, and card room located in Belfair. This is a sole proprietorship owned by Henry O'Sullivan. The card room has been in operation since February of 1998. They are requesting approval to conduct house-banked card games at nine tables, house-banked blackjack for five tables, two tables of Let It Ride, one table of Caribbean stud, and one Pai Gow poker. Special agents reviewed the internal controls and conducted the pre-operation inspections. It was determined the licensee's operations are in compliance with the requirements of appendix C. The internal controls appear to be functional as stated in the internal control submission. Based on the review, approval to participate in the Commission's house-banked card room as a Level II, Phase I, operation is recommended.

Chairperson McLaughlin called for anyone from Hank's Country Inn. **Commissioner Ludwig** asked Mr. O'Sullivan where Belfair was. **Mr. O'Sullivan** said Belfair is on the Hood Canal.

Commissioner Ludwig moved to approve. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

ALL STAR LANES RESTAURANT, Silverdale

Ms. Cass-Healy said this is an existing commercial restaurant, lounge, bowling center, and card room that has been operating since September 25, 1996. Jeffrey Coon is the president and owns 100 percent of the stock. All Star Lanes is requesting approval to operate a total of 15 house-banked tables including nine blackjack, two Caribbean stud, two Let it Ride, one progressive blackjack, and one Pai Gow poker table. Special agents reviewed the internal control submission and completed the pre-operational inspection. Based on the review, it was determined the licensee's operations are in compliance with all requirements of appendix C and the internal

controls are functional as stated in the submission. Therefore, approval to participate in the house-banked card room test as Level II, Phase I, operation is recommended.

Chairperson McLaughlin asked if this is the establishment mentioned in the letter they received from Rep. Karen Schmidt. **Bishop Director** said no. **Chairperson McLaughlin** invited Mr. Coon to come forward.

Commissioner Ludwig pointed out that Mr. Coon has a license now that doesn't expire until June of 1999 and wondered if he had done player-backed, Washington Blackjack games there before. **Jeffrey J. Coon** said they have been licensed since September 1996. **Commissioner Ludwig** asked if there were many card rooms in the Silverdale area right now. **Mr. Coon** said there was a Native American casino located approximately 12 miles north of his facility at this time, and that is the Suquamish casino. **Commissioner Ludwig** wondered if there were any other commercial licensees. **Mr. Coon** said there was not. **Commissioner Ludwig** wanted to know if this was his only facility in operation. **Mr. Coon** said it was.

Commissioner Ludwig moved to approve Mr. Coon's license for All Star Lanes to participate in the house-banking card room test program Level II, Phase I. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

HOUSE BANKED PILOT TEST – PHASE II REVIEWS

PJ POCKETS, Federal Way

Ms. Cass-Healy said this is a restaurant, bar, billiards room, and card room. The organization is owned by Pinnacle Gaming LLC. Dan Schnitzer owns 51 percent and Steve Griffiths owns the remaining 49 percent of Pinnacle Gaming. Griffiths is president of the LLC and also serves as the general manager for PJ Pockets. The licensee is currently operating 15 tables under a Level II, Phase I, including one Let It Ride, one Caribbean stud, three progressive blackjacks, one Pai Gow poker and nine blackjacks. Agents conducted a thorough review which included review and authorization of gaming operations, review of closed circuit television system, review of the cashier's cage, review of the gaming and organizational records, law enforcement and taxing authority inquiries, review of the count room controls and the key controls. On December 10, 1998, an exit conference was conducted at the premises. The licensee was cooperative and agreed to make all necessary changes requested to correct violations identified by the review team. Based on the review, the staff recommends a decision to approve implementation of Level II, Phase II, status of PJ Pockets. All violations noted during the review were corrected.

Chairperson McLaughlin invited representatives to come forward. **Steve Griffiths** said he is the general manager and one of the partners and would welcome questions. **Commissioner Ludwig** asked about the practice of using business cards to double the wagers. He said he understands they are no longer doing this, but he wondered how it benefited the facility. **Mr. Griffiths** said the employees keep their own gratuities at this particular facility and so they issued business cards to all the employees and then they hand them out to patrons and this was used as a coupon and brought to the table. It is similar to a match play that's issued in a book and there's a tremendous amount of motivation for employees to get out and solicit patrons to come and see them. It works very well. However, during the review process, it was brought up that they had not received approval for that so they discontinued that promotional program. He said they would probably return to ask for approval at a later time.

Commissioner Forrest moved that the licensee be approved for implementation of Level II, Phase II, status of PJ Pockets. **Commissioner Ludwig** seconded the motion. *Vote taken; motion carried with three aye votes.*

SPORTS CENTER, Yakima

Ms. Cass-Healy said this organization consists of a card room, lounge and restaurant. Lawrence and Beverly Orteig, husband and wife, are sole proprietors of the company. The licensee is currently operating seven tables including five blackjacks and two poker tables. The staff performed a comprehensive review including

observation of gaming operations, closed circuit television system, review of the cashier's cage, gaming and organizational records, review of the accountant controls, the internal controls, and law enforcement and taxing authority inquiries. On November 29, 1998, an exit conference was conducted at the premises. The licensee was cooperative and agreed to make all the necessary changes. Based on the review, they are recommending that the Commission approve implementation to Level II, Phase II, status for the Sports Center. **Chairperson McLaughlin** asked if they made all the changes they agreed to make. **Ms. Cass-Healy** said they did. **Chairperson McLaughlin** asked if there were representatives present.

Mike Orteig said he is the manager and his family owns the business. **Chairperson McLaughlin** asked if the Commission had anything further to ask of Mr. Orteig. No one did.

Commissioner Ludwig moved to approve the Sports Center located in Yakima for Level II, Phase II operation under the house-banked test program. **Commissioner Forrest** seconded the motion. *Vote taken; motion carried with three aye votes.*

OTHER BUSINESS / GENERAL DISCUSSION / COMMENTS FROM PUBLIC

Chairperson McLaughlin called for any other discussions; no one came forward.

EXECUTIVE SESSION

MEETING ADJOURNED until Friday, January 15 at 9:30 a.m.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, January 15, 1999

Chairperson McLaughlin called the meeting to order at 9:30 a.m. at the LaConner Country Inn in LaConner, Washington. She introduced the WSGC staff and Commission members at the head table.

MEMBERS PRESENT:

LIZ McLAUGHLIN, Chairperson;
MARSHALL FORREST, Vice Chair;
EDWARD HEAVEY; and **CURTIS LUDWIG**

OTHERS PRESENT:

BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy and Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
BOB BERG, Assistant Director, Special Operations;
AMY PATJENS, Public Affairs Manager;
JONATHAN McCOY, Assistant Attorney General;
and **SUSAN YEAGER**, Executive Assistant

APPROVAL OF THE MINUTES FROM THE NOVEMBER 12-13, 1998, MEETING

Chairperson McLaughlin asked if there were any changes to the minutes from the November 12 and 13, 1999, Commission meeting held in Vancouver, Washington. **Commissioner Forrest** pointed out a typographical error on page 8, about nine lines down where he's speaking. He said that there's the word "not" that should be removed. He also said Chairperson McLaughlin's last comment where she said the next meeting would be in Vancouver was in error because the meeting was taking place in Vancouver. She said the minutes stand approved as corrected.

STAFF REPORT

1999 LEGISLATIVE SESSION

Ed Fleisher gave a brief update on what is happening so far with legislation. He said the only bills that have been introduced are the agency-request bills to clarify the law on background checks for licensing. It's been introduced in both the House and the Senate. Senator Prentice sponsored the Senate bill. She had a hearing on it Tuesday at the very first meeting of the committee and it should be moving out of the committee fairly quickly. Nothing else has been introduced so far on the gaming area although the charitable gaming folks are working right now on a piece of legislation to allow satellite bingo machines for bingo halls and allow those machines to be played seven days a week, rather than the current three, although the draft he saw did not change the number of days allowed for regular bingo. He said he expected this to be introduced sometime soon and next month there should be more to discuss.

Commissioner Forrest asked how the Commission staff feels about the charitable request yesterday for machines similar to the tribal machines. He wondered if the staff has any concerns about that and if so, are they going to be supportive and if, are they going to articulate that to the Legislature. **Director Bishop** said there are no foreseen regulatory problems with the proposal and it is purely a policy issue. He said it is probably easier to regulate than regular bingo. He said they would welcome the Commission's wisdom on it. **Commissioner**

Forrest said it is his opinion that the staff and Commission should be supportive of helping the charities re-gain revenues, as long as there are no regulatory problems. He said he would like to see the Commission authorize the Director or have the staff support that if particularly the House committee wants to have any testimony or wants to have a hearing on it. **Commissioner Heavey** concurred with Commissioner Forrest's comments. **Commissioner Ludwig** said he is pretty much as sympathetic with Commissioner Forrest, but what they should do about it he does not have any strong feelings about whether they should formally say anything to the legislative committee or not. **Chairperson McLaughlin** said she is sympathetic with the plight of the charities because, not only do they provide services for their people, but also they provide human services for everyone in their area. The only problem with this kind of "me too" legislation is that gambling is growing. She said she would be supportive of this particular piece of legislation. She said she did not know either whether a letter should be written or wait and see what happens.

Commissioner Forrest said that because the Commission does not meet frequently, he would move that the Commission authorize the Director, Mr. Bishop, to support this legislation whether by testimony or by correspondence. He said the management would be up to him to work out. He thought the Director should be entitled to speak for the Commission that they have no objection and should support the charities.

Commissioner Heavey seconded the motion.

Chairperson McLaughlin called for discussion. **Commissioner Ludwig** said he assumed Mr. Bishop would make it very clear to them if it does not pose any added regulatory problem or expense to the Commission. **Director Bishop** said that concerning expenses they would certainly have to go and do something that they currently were not doing, such as regulating machines, per se, but he did not see that the expense would be that much to the charities. It still would not be very cost-beneficial to them. **Chairperson McLaughlin** asked if it would be more than a "Band-aid." **Mr. Fleisher** pointed out that there would be a cost – he had talked to them about it – and this is a new area of regulation. There would have to be lab approval of the machines, but they could pick up that cost through fees, and most of that cost would fall on the manufacturers who would be attempting to receive approval on their particular machine rather than to the licensee.

Vote taken; motion carried with four aye votes.

CARD ROOM PILOT TEST SUMMARY

Ms. Winslow said the pilot program is coming to an end, and they have completed a summary of the program. She handed out copies of the test report to everyone. This summary provides an overview of all the aspects of the test – the guidelines followed, details of participants, and impacts experienced already and foreseen in the future. She said she would provide a more detailed overview of the program at next month's meeting, which would include legislative changes, and overview of appendix B, and the subsequent discovery from monitoring; an overview of appendix C and discoveries from the monitoring of that. Also included are case summary reports, a report of incidents from 1997 through 1998, licensing impacts, the regulatory program, and the staff that would be required for the card room activity and then some of the Commission policy considerations. As for the policy consideration, the Commission will need to consider the following:

- Whether to allow house-banked or player-funded bank card games
- The number of tables to authorize
- Number of players authorized per table
- Methods and amount to allow for the assessment and collection of fees
- The types of card games allowed
- Limitations on wagers
- Hours for card room operations

All of these areas are included in the card room rules package that will be presented for filing in February.

There are two other policy considerations that the Commission should consider or at least be aware of.

- Commercial stimulant requirements, which require food and drink business to be primarily engaged in the sales of food and drink. There are dramatic changes in these areas and this impacts more areas than just the card rooms because it impacts all commercial licensees. The staff feels that further study is needed in this area.
- Multiple ownership locations. Although there's no specific authority to limit this, staff feel it is necessary to prohibit any combining of facility activities which are in close proximity of one another because staff feel it would effectively circumvent the 15-table limitation if two locations are next to one another.

She hoped the Commissioners would take the time to read the report and she will be glad to go over it in more detail next month.

Chairperson McLaughlin asked if, by multiple locations, she meant someone having a location in Everett, and then same person also having a site in Snohomish. **Ms. Winslow** said it meant if two locations in Everett were located right next door to each other. She said the staff has had requests in the past to combine some of the activity in one of the two facilities that are located right next to one another. For example, can surveillance be put all in one building for both locations? They have been told that they cannot do that because, in essence, they would be combining the two card room. Therefore, they require and have done so in the past, and plan to continue to keep all those activities separated.

Commissioner Forrest said that, in the old days, the Liquor Board had a requirement for Class H licenses in that they had to have 50 percent food businesses, or something like that, and wondered if that had gone by the board by rule or by practice. **Ms. Winslow** said she can't speak to the Liquor Board issue, but the gambling RCWs that the staff follow requires that the food and drink business be primarily engaged in the sale of food and drink, which is statutory language.

Chairperson McLaughlin asked what "primarily" means. **Mr. McCoy** said the definition has changed over time. Prior to a Supreme Court decision a couple of years back, the Attorney General's Office generally said that "primarily" meant more than 50 percent. In construing the word "primarily" under the Gambling Act with regard to the use of tax proceeds by municipalities, the court determined that "primarily" meant that had to be the first use, not the majority use. So, if they business covered its expenses for gambling surveillance or whatever the local jurisdiction was using the gambling tax for, they could pour the rest of it over into their general fund. So, the word "primarily" doesn't quite have the same meaning that we used to think of it. **Chairperson McLaughlin** said she meant what does "primarily" mean to the owner of the establishment. **Mr. McCoy** said he thought the sense of it was still the same – and that is that the first purpose of the business has to be a food and drink establishment, but he did not know if it requires that there be a 50 percent rule or something like that.

Commissioner Forrest asked if he means first in time, for example, someone has a restaurant and then they get gambling and then after that we don't care how much food they sell, he thought it was hard to think what it would be that wasn't at least 50 percent. **Mr. McCoy** agreed that it doesn't make a whole lot of sense. "Primarily" tends to be the way the attorney General's Office has always interpreted it as being more than 50 percent of the activities. The reason he mentioned that was because it was interpreting the Gambling Commission's Act and it used the word "primarily" in another context and so that created an ambiguity with regard to that. He said it was within the purview of the Gambling Commission to create a definition because it is an undefined term in the statute.

Commissioner Heavey thought that there was a case awhile back dealing with the Liquor Board's 60/40 position that was overturned. **Mr. McCoy** said he was not personally familiar with that. He said he knew that they had changed their rule, but that was at their own behest. **Chairperson McLaughlin** asked what the rule was now. **Mr. McCoy** said they had a requirement that there be a majority of food sales. Licenses are different. The difference between a tavern and a pub, or whatever the classes are, are required in certain circumstances that they have more food sales than liquor sales in order to maintain that type of license. In a tavern they wouldn't have that. **Director Bishop** said that in 1994, the Legislature changed the definition of commercial stimulant. It

used to be that gambling could only be an incidental part and they removed that from the definition of commercial stimulants but in another area left in the phrase “primarily food and drink.” At the time, he thought that was a good decision as far as how it evolved. When card rooms expanded to 15 tables and to house banked, that was a completely different environment was created and one that ought to be discussed. He said he was not recommending that it be changed but it needed to be discussed because of amount of investment now going into the gambling portion, as well as the amount of investment needed to go into a food and drink business. **Commissioner Forrest** asked if anyone knows if Senator Prentice is considering reviving the study group idea or some kind of a joint committee between this session and next session of the Legislature. He said the last time it fell through, but it would be nice to have the Legislature say, “primary is 50 percent, or primary is 30 percent, or primary is no longer in the ballgame.”

Mr. Fleisher said he doesn't know the answer to that question but since he would be talking to her next week, he would ask and make a report at the next meeting. **Director Bishop** said in 1994, when the Commission changed the enforcement policy regarding commercial stimulant, it used to be 50/50; it had to be no more than 50 percent gambling. He said it was changed and liberalized it quite a bit by saying anyone with a Class H (which is cocktail lounge) or a Class B (a tavern), license would be presumed to be a food and drink business. He said that still made it possible for the staff or the director, under current rule, to say they're not primarily in the food and drink business. He said that was part of the dilemma. He's not advocating that the Commission go in and start that type of regulation, but the ability is there under the current rules.

Chairperson McLaughlin said she has only seen one “mini casino” and it didn't seem to be primarily in the business of providing food and drink. **Mr. McCoy** said the statute does say that it has to be primarily food and drink and there's also a prohibition on common gambling houses. Those terms are not specifically defined. And where a term that's in the statute is not defined, there is the authority for the Commission to debate and consider adding a definition for clarity.

Commissioner Forrest asked if the confusion about food and drink being “primary” is a common thing in other states or is it special to the state of Washington. He wondered if other states had any guidance on this. Ms. Winslow said she did not know. **Director Bishop** said that Washington was the only state to his knowledge that even allows gambling under the guise of stimulating commercial business. He said this is the only state where house-banked card games are allowed by anyone other than casino licensees. The same goes for punch boards and pull tabs also. They're operated all over the country by charities and in some states in commercial locations for charities.

Commissioner Heavey said his term as a commissioner is coming to an end in June, and he would like to make a comment regarding how the Commission and the staff and the Legislature should start thinking in terms of the reality of the circumstances. Gambling has become an accepted part of American life not only in the state of Washington, but in most states. There are recent decisions that indicate that the intent of Congress was to have Indian gaming in order to provide them with the revenue to have social programs and other types of governmental activities, but they placed some limitations on it and Indian gaming has changed the face of gaming in all the states where there are Indian tribes wanting to engage in that activity. The District Court issued an injunction prohibiting slot machines on the Spokane and Colville tribes' reservations. The Ninth Circuit Court lifted that stay indicating that there was no proof that the state was negotiating in good faith. That was merely a façade, because it was clear to anybody who knew anything about that activity that the state did negotiate in good faith. Then the trial came and sure enough, it was found that the state negotiated in good faith and the slot machines were illegal. And then the tribes said, “Well, don't impose the stay because it has such a substantial economic impact upon our activities that we have engaged in that are to the benefit of the members of our tribes for providing social services, schools, et cetera, et cetera, et cetera.” He said he was not being sarcastic in his remarks. Judge Van Sickle did lift the stay because of that very fact – not that there were any problems in terms of the case being upheld, the usual reason for not imposing the stay, but he didn't impose the stay for economic reasons because he apparently recognized the intent of the federal legislation authorizing Indian gaming.

Commissioner Heavey said he thinks that this Commission, this state, and this Legislature ought to accept the fact that gaming is going to be expanded; it's going to become a normal activity, and they ought to stop this little bit of, “Well, let's move this side up a little, and then we move up this other side a little and then we move up the other side a little. . .” He said he thought the Commission ought to go to the Legislature and say, “Look, let's face

reality -- gaming is here. Let's authorize gambling in the state of Washington and charge the Gambling Commission with the responsibility to properly regulate it even better than what they do in Nevada," which is not saying very much, "and let these people engage in the activities that they want to engage in whether it's Indian gaming, whether it is non-Indian gaming." He said that they all ought to be on equal footing, which is slot machines and everything else that goes with it. He said he thinks that's coming; it's going to happen and all the Commission is doing is playing Peter at the dike in Holland. He said that it was unfortunate that the finger that they're putting in the hole is not large enough to stop the water from coming through -- it's still going to come through and the dam is still going to collapse. He concluded that they ought to face reality and start addressing the issues directly. When he read the decision of Judge Van Sickle, he said, "Well, you know, that's the end of the ballgame."

Chairperson McLaughlin said that was food for thought. **Commissioner Heavey** said what prompted his thought was the combining of facilities for 15 tables in the enhanced card rooms. If they can reduce the cost -- if they have two tables and they have electronic means in which to combine the surveillance from one point and that still doesn't affect the regulation, what's the difference? He said he's not arguing with the staff, but in reality he wanted to know what the difference was. If there is proper surveillance, and it meets minimal requirements of the statute -- and there are lawyers out there who know how to get around every statute that was ever written -- and if it meets the minimal requirements to the statute and it's properly regulated, then who cares? Why should they care? He said that was what prompted his comments.

PHASE II REVIEW

YAKAMA TRIBE'S LEGENDS CASINO, Toppenish

Bob Berg, Assistant Director, Special Operations Division, said the majority of the members of the Yakama Tribal Gaming Commission and the Yakama Tribal Gaming Corporation are in attendance and would like acknowledge the presence of [Mr. Harris \[?\] Jr.](#), the vice chair of the Gaming Commission, and Mr. Frances Lamebull, the executive director of the Tribal Gaming Agency and Mr. Virgil James, the Chairman of the Board of Directors of the Tribal Gaming Corporation. Also present was Mr. Nick Phillips, the general manager of the casino.

Mr. Berg said the Legends Casino is owned and operated by the Confederated Bands and Tribes of the Yakama Indian Nation. He passed out the appropriate WAC under which the Commission operates in manners such as this, specifically because after six months of operation, the Tribal Gaming Unit conducts what's called a Phase II review in anticipation of the tribe being able to move to that level which involves higher betting limits, tables, et cetera. As required by the WAC, notifications of the meeting were sent to local law enforcement, the tribal casino and the tribal government and he forwarded to Director Bishop a recommendation for approval of Phase II. He said he hoped the Commission would come to the same conclusion after hearing all of the presentation. The Commission has three options: They can approve, deny or approve with conditions, Phase II. He said the Commission heard a similar case for the Puyallups and approved the Phase II with conditions. He introduced the two agents who would be making the bulk of the presentation.

Leonard Junk, Supervising Agent in Charge of the WSGC Tribal Gaming Unit, gave an overview of IGRA and the compact as it relates to the Confederated Tribes of Yakama.

Mr. Junk said that on September 9, 1994, the NIGC approved the Yakama Indian Nation Gaming Ordinance of 1994. This ordinance outlines the duties of the Tribal Gaming Commission as the regulatory body and the duties of the board of directors as the management of the casino. As it relates to the tribal-state Compact, the Confederated Tribes and Bands of the Yakama Indian Nations entered into negotiations with the state of Washington for Class III gaming. The compact was signed by then-Governor Mike Lowry on June 9, 1996, and was published in the Federal Register on August 2, 1996. Articles of Incorporation and by-laws were approved in late August of 1997. In January of 1998, state gaming agents started conducting the preliminary work for the opening of the Yakama Legends Casino. Agents began to work onsite in March of 1998 and the casino opened for business on May 14, 1998, at Phase I level. The tribal-state compact states that during the first six months of operation, the Phase I level gaming stations shall not exceed 30 tables plus one additional nonprofit charitable

table to station. Wagering limits shall not exceed \$250 and the hours of operation may not exceed 112 hours per week on an annualized basis.

Mr. Junk said that on September 22, 1998, the Yakama Nations Tribal Gaming agents and executive director, Frances Lamebull, who is present here, requested the state gaming agents begin their Phase II review. Before the Phase II review limits can be implemented, there are five conditions that must be verified. He said Mr. Dave Trujillo would elaborate on those next. If the Phase II is approved and implemented, the following maximums will apply:

- The gaming stations may increase to 50 tables plus two optional charitable tables;
- The wagering limits shall not exceed \$500; and
- The hours of operation may not exceed 140 hours per week on an annualized basis.

Mr. Trujillo, who will speak next, was assisted by three other agents.

Dave Trujillo, Tribal Gaming Agent, thanked the commissioners for the opportunity to make his presentation. The Confederated Tribes and Bands of the Yakama Nation are comprised of 14 tribes and bands recognized under the Treaty of 1855. The reservation of approximately 1,375,000 acres is located in Toppenish along the eastern slopes of the Cascade Mountain Range. He acknowledged the hard work and efforts the Nation has made in creating the gaming enterprise. In addition to other sources of revenue, the Tribe and tribal enterprises include timber that they manage. They harvest approximately 309,000 commercial acres of timber allowing for an annual cut of 142 million board feet per year. The Nation is part of large producer of fruits and vegetables with approximately 150,458 acres in irrigation. The Nation operates a cultural heritage center and resort RV park. The Nation has developed an entrepreneurial training program for tribal members. The Nation also provides financial assistance to tribal members and tribal and member-owned ventures. The Tribe secured finances from HP Yakama, Inc, a division of Hollywood Park, Inc. in September of 1997. HP Yakama, Inc. was approved by the Commission in February of 1998. The Yakama Legends Casino was ready for business in May of 1998. The Tribe now wishes to advance to the next level of gaming authorized in the compact.

Mr. Trujillo said that Section III of the compact says that after the first six months of operation, the State Gaming Agency will review the gaming operations and associated activities to determine compact compliance and that any increase in number of gaming stations, hours of operation, or wager limits initially authorized as conditions in compliance with five requirements. This is accomplished by using the comprehensive examination program previously approved by the Commission that examines specific areas in depth. They examine casino operations including administrative controls, gaming controls, operating controls, and applicable flow of funds in cash transactions, internal controls, count room controls and accounting department controls in the Tribal Gaming Agency.

The investigative examination included observation, inquiries, interviews, comparison, re-calculation, and analysis. During the examination they observed actual procedures and compared them to compact requirements and internal controls as written. They reviewed the actions and established policies/procedures of the Tribal Gaming Agency to determine if they are meeting their obligation under the compact and to determine if they are capable of being the primary regulator of the facility. This is a complicated and demanding process that provides a complete and in depth look at facility. Moving to the next level of compact required the following:

1. The compact requires that there have been no violations of the provisions of the compact, which resulted in sanctions imposed by the federal district court or the NIGC. They have contacted area representatives of the NIGC and he confirmed that there has been no such thing to date.
2. The compact requires that the staff determine that there have been no violations of the compact, which have been substantial or due to repetition would be deemed material. To satisfy this requirement, the staff examined administrative controls, the day-to-day operations of the casino gaming department, the cage, and the security along with internal controls and gaming. They examined the records, record-keeping requirements, and asset-tracking systems of the accounting department. They examined the day-to-day operations of the Tribal Gaming Agency that established regulations, procedures and systems. Compact violations were found and which are described in the report before the Commission. These items have been corrected or are in the process of being corrected.

3. The compact requires there to be no material adverse impact on the public health, safety, or welfare of the surrounding community in the nature of criminal activities directly related to the operation. They met with members of local police jurisdictions and all are in agreement that this type of impact has been minimal.
4. The compact requires that the agency determine that the Tribal Gaming Agency has developed a strong program of regulation and control demonstrating an adequate level of proficiency which includes the hiring of tribal gaming agents and independent management structured separate from that of the gaming facility or tribal body, a thorough and developed system for the reporting of compact violations and a strong and consistent presence within the Class III facility. In this case, the Tribal Gaming Agency has met these conditions or have taken the steps necessary to meet these conditions.
5. The compact states that the staff must determine that there have been no material violations of Appendix A of the compact. Appendix A sets forth the minimum standards of operation and management of gaming activities. In this case, violations of Appendix A were found, the nature of which are described in the report before the Commission. These items have been corrected or are in the process of being corrected.

Mr. Trujillo said he would be happy to answer questions.

Chairperson McLaughlin said that, when the Commission visited the casino in Yakima, they were told the controller was not going to be used. She wondered whatever happened. She noted that the position is gone, but she wondered who took its place. **Mr. Trujillo** said initially what occurred at the facility was the chief financial officer resigned and is now back at one of the southern western tribes and the controller's position was abolished. They do have a new chief financial office whose name is Rob Erwin. He seems to be making a lot of corrections. For the exact nature of his qualifications he deferred to Mr. Phillips. **Chairperson McLaughlin** called on Mr. Phillips.

Nick Phillips, said the Tribe did have some difficulties in the absence of a director of the finance department, but they have now filled that role. Mr. Erwin has many years of experience with gaming casinos. He has been in place for a month and is closing the accounts that were errant and catching up quickly. They feel confident that he will be able to fill that role now. That was a major concern at the state that they didn't have someone in that position, but now it's been filled and he agrees it is satisfactorily. **Chairperson McLaughlin** wondered about the controller position. **Mr. Phillips** said this person is the director of finance, who is in charge of the accounting and finance department. **Mr. Trujillo** said some of the tribal casinos have a chief financial officer, a controller, and another controller. Other tribes simply have just a controller. It depends on the nature of how they split the functions up.

Commissioner Forrest commended the Tribe for its continuing policy of no alcohol in the casino. He said if they can have a prosperous casino it seemed to him that they would both be getting the revenues that this legislation was designed to generate and at the same time be giving a little boost to the fight that all societies have to wage against the abuse of alcohol.

Chairperson McLaughlin called for any other questions.

Commissioner Ludwig referred to page 19 of the report, number 3, where it says they determined that one Class III vendor was not certified by the state gaming agency. He wondered if that was a reference to the Colville casino. **Mr. Berg** said yes, it was. He pointed out that there is a two-page cover memo that gives highlights of the case report and their oral presentation.

Commissioner Ludwig said he was on the Commission when they approved the compact and he was present June 9, 1996, at the White Swan in connection with Treaty Days when the Governor signed the compact. That experience proved to him how well things can be done when the tribal gaming agency and the state gaming agency cooperate. Even if there were some discrepancies, they seem to have been resolved satisfactorily. He moved to approve the Yakama Legend Casino for Phase II operation. **Commissioner Forrest** seconded the motion.

Vote taken; motion carried with four aye votes.

Harris Teo, Jr. Yakama Indian Nation Tribal Council and vice chairman of the Yakama Nation Gaming Commission, Legends Gaming Casino thanked the Commission for their positive vote and for the hard work and long hours that were put into the review. He commented on the report about IGRA and said it does not allow the tribes to have gaming on reservations, but just allows the state and the federal government to regulate their gaming that's allowed by their treaty of 1855. The treaty is what allows them to have gaming, not IGRA.

Virgil James, chairman of the board, thanked the Commission for approving their request. He introduced the two board members present. He said they have a good group and a good team. They have a drug- and alcohol-free requirement for all employees in a tribal government setting, which has been enforced for a year or two. They require testing of all the employees. They run a treatment center as well. He said this was the board's first public hearing and they were collecting information. It has been a good experience and hearing positive comments from the Commission is good news to him. **Chairperson McLaughlin** thanked them for making the trip.

RULE UP FOR FINAL ACTION

TEMPORARY MORATORIUM ON NET RETURN REQUIREMENTS

Ms. Patjens said this is up for final action today and was proposed by the staff in conjunction with the Washington Civic and Charitable Gaming Association. It would authorize a temporary moratorium on compliance with the net return requirements. It has only been on the agenda for two meetings, but that allowed enough time for the staff to get everything filed and all requirements for filing have been met. Comparing what has happened since the third quarter of 1995 until the third quarter of 1998, eight tribal casinos opened during that period -- five in 1995, two in 1996 and one in 1998. Tribal casinos began offering electronic bingo games, such as Mega Mania, Rocket Bingo, and Wild Ball Bingo. There were 23 house-banked card rooms that opened during that time period. Many changes have occurred in Canada, including a devaluation of the Canadian dollar and also some changes allowing slot machines in Canada, as well as different type of electronic gaming in the neighboring states of Idaho and Oregon. Every quarter there is a list of the top 40 bingo operations. The gross receipts for the top 43 of those decreased by \$1.4 million when the third quarters of 1997 and 1998 are compared. Also in the last two years, there have been 13 bingo operations that have closed. Those closures have been all over the state.

Ms. Patjens said this rule would decrease the net return requirements by 5 percent through February 2000. It will also allow the Commission time to study what's going on in the industry. The requirements for participation in the moratorium include notifying the Commission of the intent to do so and what they are doing to meet the net return requirements, and they must maintain a positive cash flow. Since the last Commission meeting, they added some clarification language and to explain what happens to an organization that still can't meet the net return requirements with that 5 percent difference and those organizations will have to come before the Commission to determine what will happen -- whether their license will be limited or what actually will be taken. Also, the new net return requirements would apply to licensees who wants to increase in license class, they have to apply so they can operate and receive more gross revenue. There are several letters in support of the moratorium included in the handout packet. This is up for final action and the staff is asking that the motion, assuming that it is passed, include a proviso that this would become effective 31 days after it's filed, which would be on approximately February 20th.

Commissioner Ludwig asked if the moratorium is about one year long. **Ms. Patjens** said that was correct.

Ms. Winslow said the task force has already been pulled together. They talked about further discussions on the moratorium and how they would move forward with the task force during the study sessions. Additional individuals indicated they were interested in participating and the staff will be in contact with those people that are interested after this Commission. She hoped that they would be able to set up a meeting prior to the next Commission meeting and map out a plan for the next year. They heard quite a bit of discussion during the study session and it is likely that this topic would be discussed during all study sessions over the next year so that

everyone will be kept apprised of what is going on. A big concern that was addressed during the study session was the pay-out percentage. In the past, the staff felt it was necessary to regulate or limit the pay-out percentage because that was one of the areas that the licensees were competing with one another. They pulled out because the staff was going to place total reliance on the net return. The staff is finding that the pay-out percentage is one way that is increasing the competition between the licensees. There are a lot of problems being encountered in the bingo market area. She said they were either dealing with a price war, a prize war, or someone who is operating with such high expenses that they're not meeting their net return. With increased competition, a lot of these things are starting to crop up. She said they may need to come forward with some recommendations during the program to take a look at the pay-out percentage, because what they're seeing right now – or at least what they are hearing – is that there is a reoccurrence of what created the need for this net return rule in the first place. When it was created there were price wars and prize wars to the extent that it made it almost impossible for the charities to do their good work.

Director Bishop said that he is interested in fixing this area because he believes some major policy changes are needed regarding how the agency looks at charities in the 1999 environment, which is far different than it was when they first started in 1994 regulating the income and prize portions. Over that period, they have tried to fine-tune and change it to fit what the legislative intent was in making sure the money was spent on the purposes of the charity. The procedures have been complicated and he asked the Commission to consider assigning one of their members to volunteer to represent the Commission on the task force. Or, if not one, perhaps a different member could come to each meeting. **Chairperson McLaughlin** asked for a volunteer. **Director Bishop** said she may want to wait and see if Commissioner Herbold is interested in being that person because she had expressed interest previously in this subject.

Chairperson McLaughlin asked if anyone wanted to testify on the temporary moratorium on net return requirements to charitable nonprofit licensees. She asked if anyone was opposed; no one came forward.

Commissioner Ludwig moved to approve the rule change WAC 230-20-058, with an effective date 31 days after approval; **Commissioner Forrest** seconded the motion.

Vote taken; motion carried with four aye votes.

OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC

Chairperson McLaughlin asked if anyone wished to make comments on something that was not on the agenda.

Bob Tull, attorney for the Recreational Gaming Association, which is the industry group of card rooms, both large and small. The RGA is very appreciative of the efforts staff have made on the draft set of rules and that there will be opportunities to work through issues in a non-hearing, informal setting to try to work through questions and issues. He said it had been very productive so far. He said the report that was given to the Commission appears to be very thorough and he would suggest that at future Commission meetings they follow some of that same format in addressing some of the same issues but from an industry perspective and other perspectives as well. He hopes that the Commission will set aside plenty of time for these discussions in months to come.

Commissioner Forrest asked what Mr. Tull thinks "primary" means. **Mr. Tull** said what licensees have been living with and is a matter of great concern right now in this state is the fact that local jurisdictions can become partners through the local taxation option that this Statute provides and as Mr. McCoy accurately points out the courts have said that the cities have to look toward regulation of gaming and then they can exert this taxation authority. He said "primarily" does not mean 50/50 anymore. In the case of commercial stimulants, he said they would come back with a thorough discussion of all those issues. He said that as Commissioner Heavey had pointed out, all sorts of changes have taken place. That whole issue is ripe with opportunities for Commission struggle. He said the deeper one goes into it, the more it can be seen that it is an enormous opportunity for confusion. One can become extremely involved in the variety of policy concerns that may or may not be the Commission's ultimate wish, but certainly a discussion of this issue is healthy.

Commissioner Forrest asked if the Association is considering any significant legislation. **Mr. Tull** said the only discussion they've had so far has had to do with the question of should there be a change in the tax aspect of it. The tax burden in some situations will make many of these businesses un-viable. Some of them if they happen to be very, very successful might be able to survive for a time, but it will be very difficult. There will be other circumstances where people will look viable for awhile. Unfortunately, what's happening is that casual onlookers look at only at the most successful and say, "Ah ha, that's going to persist everywhere forever and without any type of modification," and that's not the case because there is a 50,000 pound gorilla swinging through the trees right now and those are the machines that are going to come to the reservation -- the compacted gaming arena. It's going to have a significant impact -- not devastating or destructive, but it's going to change the playing field once again. So, when they start talking about isolating the issue of commercial stimulants from everything else, it can't be done. There is going to be an enormous evolution and whether or not those machines make it in the big charitable arena eventually will affect the charities whether or not they eventually make it into the commercial areas another big effect. The RGA's effort is to help its membership operate under the rules of this Commission to continue the increasing sophistication level of operators and as far as legislation to see if the taxation issue can be addressed.

Mr. Tull said that another issue that is out there is whether or not local jurisdictions get to regulate, under certain conditions, the types of card rooms that may be operated in certain jurisdictions. As a land use attorney, he understood that there may be some techniques that would be available to do certain things, but some of the techniques presently being employed probably won't be eventually upheld in court. At a minimum, they usurp the authority of the state, which has preemptive regulations. He said that was a different discussion and at the appropriate point, he would give his perspective on this.

Commissioner Forrest said he is a little bit concerned about the interrelation between the commissions' responsibility to decide whether someone is qualified for a license, which he has been told is always tied to a specific location, and the efforts of a number of municipalities trying to limit and treat gambling like they do nude cabarets and so forth. This area is new to him and a puzzling end of the relation is because on the one hand he doesn't want to cram things down municipalities' throat. On the other hand, it doesn't seem to him that the Commission is to enforce zoning ordinance specifically the ones that may be challenged by granting and withholding licenses. He asked if Mr. Tull has any preliminary views, since this thing is simmering, it only helps him if he has a chance to think about it before it becomes a crisis.

Mr. Tull said the issue rarely came up while he was on the Commission, but it is his view so far that local jurisdictions need to determine whether they are all the way in or all the way out of gambling. He said those who want to be more subtle than that and who want to go to the trouble of it should perhaps eventually determine that through floor space allocations and other types of things that don't say gambling regulations on the face, they might be able to determine what would be all right in terms of a restaurant, but generally speaking, the Statute says that food and beverage businesses are allowed to do a variety of things, including pull tabs and card rooms and so forth. If they're going to allow food and beverage businesses in a particular location, then right now it is very clear that the law allows card room or pull tab activities to be conducted with it.

Mr. Tull said the local jurisdictions have the substantial authority to regulate all the externalities. If they don't want to have a sign bigger than one square foot, they can pass that law. If they want to make sure that a certain type of activity only has one driveway, for instance. All the normal actual safety and public health issues that they can use zoning and other regulations to achieve, but to say that they'll allow this card game but not this one, is ripe to the circumstances that preceded the creation of this Commission. The industry wants regulation to be distant. They want the commissioners and the professional staff to make sure that statewide there's regularity and uniformity. He said he thought that the statute is extremely clear that gaming regulation is the state of Washington's role carried out through this Commission. If the locals want to exercise their rights under that Act, they have to say "Sorry, we just won't take it." The industry is trying to sort out right now what to ask of this agency, if anything, or what to suggest, if anything. The industry is not sure at this point and he is aware of the difficulty of the agency ignoring this type of potentially long term damage and interference.

Mr. Tull said he's also aware that it's very difficult for the Commission to tell local government that they've been determined to be in the wrong. He said some coordination of efforts on a communications level, some coordination at the Attorney General's Office, or perhaps other communications could help move things in a

more positive direction. It's a major concern, it gets complex as well when different types of vested rights issues are mixed together. He said he did not think it required legislative attention at this time, but it may require some judicial interpretation. From his own personal perspective, he would want to make sure the authority is not diluted or eroded, and both of those opportunities exist in this situation.

Commissioner Ludwig referred to Mr. Tull's earlier comments about an appropriate time for him to present the RGA's position and suggestion to the Commission. Commissioner Ludwig said he would like that happen sooner rather than later because they have license applications pending next month and very soon at least businesses within some of the cities that are struggling with this problem. **Mr. Tull** said they've been working on it. He has some preliminary briefing done, but he is working with other counsel from the industry and in the coming weeks and will keep the Commission fully informed.

Patty Dion, Yakima YWCA Executive Director, said they have been in operation for approximately 11 years with bingo as one of their cash flow items and she wanted to speak to the issue that Commissioner Heavey spoke to and that is equal playing field. The mission of the YWCA is one of empowerment of all individuals. They approve of the things that are happening with Legends – the empowerment of their people, more jobs, and educational opportunities. The YWCA approves and appreciates all of those things that are happening. However, the impact on her agency in the last six months is about \$200,000 in net revenue. That \$200,000 is hard to come by from other parts of the community. She said she did not speak for the others who are here from the Yakima area and the other three non-profits that depend so totally on these dollars from the community, but it represents about \$1 million. So, equal playing field is essential to them. Any issue that the Commission can address with the moratorium is wonderful. She thanked them for taking the time out to study that and to see how they can more effectively operate.

Ric Newgard, Seattle Junior Hockey and a member of the WCCGA, thanked the Commission for their support that they are pledging on any legislation the industry and that staff are working with and they really appreciate that. They also appreciate the task force looking into their industry. It has evolved quite a bit in the last 10 years. There have been many changes and many of their clients depend on what they do and so keeping the nonprofit industry viable and profitable is essential to the community.

Chairperson McLaughlin asked if anyone had any further comments.

Mitzi Smart, Yakama Gaming Commission, referred to Ms. Dion's comments regarding what is fair. She said it would take the casino years to catch up. She said they just started and the non-profits have been in it for years. With Legends Casino, the Tribe is employing a lot of single parents at their facility who have come off the welfare rolls. She said it brings pride to those who have never had jobs before. She said they were told about what happens when a gas station on one corner she said her understanding of this is the competition of business. She also thanked the Commission for approving their Phase II.

Chairperson McLaughlin called for any further comments.

Commissioner Ludwig said he wanted to acknowledge Chairperson McLaughlin's ability to move the meetings right along. **Chairperson McLaughlin** said she hopes she doesn't move the meetings along too fast and that all should be able to make comments and ask questions when they want to.

Chairperson McLaughlin called for a short executive session and said the meeting would be adjourned immediately following that. She said the February 11 and 12, 1999, meeting would be held in Olympia.

EXECUTIVE SESSION

MEETING ADJOURNED

Minutes submitted to the Commission for approval,

Susan D. Yeager
Executive Assistant